

EMERGENCY ADD-ON

**BOARD OF COUNTY COMMISSIONERS
AGENDA ITEM SUMMARY**

Meeting Date: August 17, 2005

Division: Public Works

Bulk Item: Yes X No

Department: Public Works

Staff Contact Person: Ann Riger

AGENDA ITEM WORDING: Approval of a Lease Agreement with Hillsborough Center Associates, LLC. for approximately 1,450 s.f. of office space at Habana Plaza in Key West for the 16th Judicial Circuit Drug Program, pending further review by Risk Management.

ITEM BACKGROUND: On September 30, 2005 the lease for office space at 1315 Whitehead Street for the Drug Court Program will expire. Effective July 15, 2005, an Assignment and Assumption of the Lease transpired between Southernmost Ltd., (assignor), and SouthWhitehead LC (assignee). SouthWhitehead LC is willing to extend the lease for an additional four (4) months at a rate of \$15,000.00 per month. We are currently paying \$5,376.32 per month.

PREVIOUS RELEVANT BOCC ACTION: At a special meeting on August 28, 2000, the Monroe County BOCC approved to enter into a lease agreement with Southernmost Ltd., for the entire first floor of the office building located at 1315 Whitehead Street to commence on September 15, 2000, and to expire on September 30, 2005.

CONTRACT/AGREEMENT CHANGES: N/A

STAFF RECOMMENDATIONS: Approval.

TOTAL COST: \$3,202.09 per month

BUDGETED: Yes X No

COST TO COUNTY: Same

SOURCE OF FUNDS: Judicial

REVENUE PRODUCING: Yes No X **AMOUNT PER MONTH** **Year**

APPROVED BY: County Atty OMB/Purchasing Risk Management

DIVISION DIRECTOR APPROVAL:

Beth Leto for
Dent Pierce

DOCUMENTATION: Included X Not Required

DISPOSITION:

AGENDA ITEM #

MONROE COUNTY BOARD OF COUNTY COMMISSIONERS

CONTRACT SUMMARY

Contract with:	<u>Hillsborough Center</u>	Contract #	<u> </u>
		Effective Date:	<u>10/01/05</u>
		Expiration Date:	<u>09/30/08</u>

Contract Purpose/Description:
1,450 s.f. of office space for the 16th Judicial Circuit Drug Court program

Contract Manager:	<u>Ann Riger</u>	<u>4549</u>	<u>Facilities Maint/Stop #4</u>
	(Name)	(Ext.)	(Department/Stop #)

for BOCC meeting on 08/02/05 Agenda Deadline: 08/17/05

CONTRACT COSTS

Total Dollar Value of Contract: \$ 121,135 Current Year Portion: \$ 0
 Budgeted? Yes ☒ No ☐ Account Codes: 8300/- - 530740
 Grant: \$ N/A _____
 County Match: \$ N/A _____

ADDITIONAL COSTS

Estimated Ongoing Costs: \$_____/yr For: _____
(Not included in dollar value above) (eg. maintenance, utilities, janitorial, salaries, etc.)

CONTRACT REVIEW

	Date In	Changes Needed	Reviewer	Date Out
Division Director	8/12/05	Yes <input type="checkbox"/> No <input type="checkbox"/>	Beth Lebo	8/12/05
Risk Management	8/12/05	Yes <input checked="" type="checkbox"/> No <input type="checkbox"/>	Spencer A. Kunkin	
O.M.B./Purchasing		Yes <input type="checkbox"/> No <input checked="" type="checkbox"/>	Andrew J. Small	8/12/05
County Attorney	8/12/05	Yes <input type="checkbox"/> No <input checked="" type="checkbox"/>	Suzanne Hill	8/12/05

Comments: Changes noted in MODERNIZATION + LIABILITY LANGUAGE

COMMERCIAL LEASE AGREEMENT

This Lease is made and entered into effective as of the **17th day of August, 2005** between **Hillsborough Center Associates, LLC**, a New Jersey limited liability company ("Lessor"), and **Monroe County**, ("Lessee").

For and in consideration of the rent to be paid, the mutual covenants and agreements herein, and other good and valuable consideration received by each party from the other, the sufficiency of which is hereby acknowledged, the parties consent and agree as follows:

1. **Demised Premises.** Subject to the terms and provisions of this Lease, Lessor leases to Lessee and Lessee leases from Lessor, those certain Premises (the "Premises") located at **3100 B Flagler Avenue**, Key West, in the County of Monroe, State of Florida. The Premises consist of approximately **1,450** square feet. Lessee's taking of possession of the Premises and its payment of the first month's Base Rent due under this lease shall constitute Lessee's acceptance of the Premises in all respect, including its square footage configuration and other physical features. By taking possession of the Premises and paying the first month's Base Rent, the Lessee waives any objections to the square footage, configuration and other physical features of the Premises, and the amount of Base Rent and all other charges due for the Lease of the Premises.

2. **Term.**

2.1. Lease Commencement. The term of this Lease shall commence on **October 1, 2005** (the "Commencement Date").

2.2. Initial Term. The initial term of this Lease (the "Initial Term") shall be the period of time following the Commencement Date equal to **three (3) years plus two 1 (one) year options to renew**. For purposes of this Lease, "Term" shall mean the Initial Term and any extension of it.

2.3. If Lessee, with Lessors prior consent, shall occupy the Premises before commencement of the Term, all provisions of this Lease shall be in full force and effect commencing at the time of occupancy, and Base Rent and Additional Rent for that period shall be paid by Lessee at the same rate specified in this Lease for the Term.

3. **Net Lease, Operating Expenses and Taxes.** It is the intent that the Rent provided for in this Lease shall be an absolute net return to Lessor so that this Lease shall yield to Lessor the net Base Rent specified in this Lease and that all costs, expenses and obligations of every kind and nature whatsoever, whether general or special, ordinary or extraordinary, that may be necessary in connection with the use, occupancy or operation of the Premises shall be paid by Lessee. All provisions of this Lease are to be construed in light of the intent that this be an "Absolute Triple Net Lease".

4. **Rent.**

4.1. Base Rent. As rental for the lease of the Premises, Lessee shall pay to Lessor, at Lessor's address set forth herein, or at such other place and to such other person as Lessor may from time to time designate in writing for the initial term of this Lease, total monthly base rent ("Base Rent") in the initial amount of:

-1-

Initial Term:

Year 1: October 1, 2005 – September 30, 2006 - \$3,202.09

Year 2: October 1, 2006 – September 30, 2007 - \$3,362.19

Year 3: October 1, 2007 – September 30, 2008 - \$3,530.30

Option Periods:

Period 1: October 1, 2008 – September 30, 2009 - \$3,706.82

Period 2: October 1, 2008 - September 30, 2010 - \$3,892.16

Payment will be made upon receipt of a proper invoice in accordance with the Florida Prompt Payment Act §218.70, F.S., et seq.

The obligations of the Lessee under this Lease Agreement are subject to the availability of funds lawfully appropriated annually for its purposes, by the Monroe County Board of County Commissioners.

Renewals: Two (1) year options to renew with 5% annual increases (tax exempt) payable in monthly installments, in advance, due on the first day of each calendar month during the Term of this Lease. If the Term of this Lease shall begin or terminate on other than the first or last day respectively of a calendar month, all Base Rent and other charges accruing under this Lease for such portion of the partial calendar month shall be apportioned and paid on the basis of a 30-day month. In addition to any other sums due under this Lease, simultaneously with Lessee's execution of this Lease, Lessee shall pay Lessor the first month's rent.

4.2. Additional Rent. In addition to the foregoing, all other payments to be made by Lessee to Lessor under this Lease shall be deemed, for purpose of securing collection of them, to be "Additional Rent" under this Lease and shall be due and payable as and when required in this Lease, and Lessor shall have the same rights and remedies on Lessee's failure to pay them as a the non-payment of Rent.

-2-

4.3. Covenant of Rent. Lessee agrees that the provisions for payment of Rent herein are independent covenants of Lessee and Lessee shall not interpose any counterclaim or counterclaims in a summary proceeding or in any action based on non-payment of rent or any other payment required of Lessee under this Lease.

5. **Use of premises.**

5.1. Permitted Use and Business Name. The Premises shall be used and occupied only as a **drug court treatment program with a urinalysis component**

and for no other purpose. The business of the Lessee in the Premises shall be carried on under the name and style **16th Judicial Circuit Drug Court Program** and under no other name and style unless approved by the Lessor in writing.

5.2. Hours of Business. During the term, the Lessee shall conduct its business in the Premises, at a minimum, Monday through Friday from 8:00 AM to 5:00 PM, except on legal holidays. Lessor may require other minimum hours, if such requirement is made of at least seventy-five (75) percent of all other lessees in the Building. Lessee may conduct business on the Premises, in addition to the above listed times, at Lessee's sole expense.

5.3. Opening and Continuous Occupancy. Lessee shall open the whole of the Premises for business to the public, fully fixtured, stocked and staffed within thirty (30) days of the Commencement Date, as defined below. The Lessee shall continuously, actively and diligently carry on the business specified in Section 5 on the whole of the Premises during the Term, during the hours and on the days that are required by this Lease, except when prevented from doing so by force majeure. The Lessee acknowledges that its continued occupancy of the Premises and the regular conduct of its business therein are of utmost importance to neighboring lessees and to the Lessor in the renting of space in the Building, the renewal of other leases in the building, and the efficient and economic supply of services and utilities. The Lessee acknowledges that the Lessor is executing this Lease in reliance on Lessee's continuous occupancy and that it is a material element inducing the Lessor to execute this Lease.

5.4. Lessee's Covenants as to Use and Occupancy. Lessee shall exercise reasonable care in its use of the Premises or Building and shall not do or permit anything to be done in or about the Premises or Building, nor bring nor keep anything in the Premises or Building that will in any way affect the fire or other insurance on the Building, or any of its contents, or that shall in any way conflict with any statute, ordinance, rule, regulation, order, law or other requirement (collectively the "Laws") affecting the occupancy and use of the Premises or Building, which is now, or may subsequently be, enacted or promulgated by any public authority. Lessee shall not obstruct or interfere with the rights of other lessees of the Building or injure or annoy them. Lessee shall not use, or allow the Premises to be used, for any illegal purpose, or any purpose constituting a public or private nuisance or for sleeping purposes, or cooking, and nothing shall be prepared, manufactured, or mixed in the Premises that would emit an odor of any type into or around any part of the Building. Lessee will maintain and clean both front and rear exterior of unit on a daily basis. All trash, papers, or like on the ground shall be picked up and disposed of properly on a daily basis. Lessee shall promptly comply with and execute all of the above mentioned Laws and all rules at Lessee's own cost and expense. On or prior to the Commencement Date and at all times during the Term of this Lease and any extensions or renewals of this Lease,

Lessee shall, at its expense, obtain and maintain all permits, licenses and other governmental authorizations which are necessary for the operation of its business in accordance with Section 5.

5.5. Display Windows. Lessee shall keep display windows attractive and neatly dressed, and shall screen in an aesthetically pleasing manner all unsightly items within the Premises which can be seen from the display windows, including without limitation office furniture and other similar items are visible behind interior glass partitions. Display windows and lighted signs (if any) shall be kept illuminated by the Lessee on all business days until the later of 5:00 P.M. or least one-half hour after the Building closes for business. Lessee agrees that if the display of any article exhibited by it in the display windows, or in or about the Premises, or the display of any signs or placards in or on the Premises at any time during the term shall be objected to by the Lessor, and if notice in writing is given by Lessor or its agents of such objection or objections, the Lessee shall immediately and as often as such notices are received remove such display or such articles objected to, and failing so to do, expressly agrees that the Lessor or its agents may enter the Premises and remove such article, sign or placards objected to, using such force as may be necessary so to do without being deemed guilty of any forcible entry, detainer, trespass or in breach of the covenant of quiet enjoyment.

5.6. Prohibited Uses. Lessee shall not use the Premises nor permit them to be used for any of the following purposes:

(A) for the sale by the Lessee, as its principal business purpose, of any merchandise which the Lessee, in the course of its normal business practice, purchases at manufacturers' clearances or purchases of ends-of-runs, bankruptcy stock, seconds or other similar merchandise;

(B) for the sale of second-hand goods, war surplus articles, insurance salvage stock, fire sale stock, merchandise damaged by or held out to be damaged by fire, except merchandise damaged by fire or smoke occurring in the Building, and then only for 30 days after the date of any such damage;

(C) as an auction or flea market;

(D) for a bankruptcy sale or going-out-of-business sale or liquidation sale or any similar sale, unless the Lessee is in fact in bankruptcy or is going out of business or is in liquidation, in which case such sale shall not continue beyond 30 days;

(E) a business primarily used for a mail order office or catalog store;

(F) any business in which the Lessee is engaged in intentionally deceptive or fraudulent advertising or selling practices or any other act or business practice contrary to honest retail practices;

-4-

(G) any "adult" store, lingerie store, massage parlor or any other business dealing in pornography and pornographic materials or sex related items; with the exclusion of adult videos.

(H) any use other than as specified in paragraph 5.1 above.

6. **Lessee's Covenant not to Conduct Similar Business within Specified Area and Retail Restriction Limit.** During the term of this lease, Lessee shall not,

directly or indirectly, engage in any business similar to or in competition with that for which the Premises are let, within a radius of 2 miles in each direction of the premises..

7. **Use of Common Areas.** Lessee and its employees and invitees shall have the non-exclusive right, in common with Lessor and all others to whom Lessor has or may hereafter grant rights, to use the common areas as well as, where applicable, common corridors, courts and arcades, together with facilities such as washrooms, comfort rooms, lounges, drinking fountains and toilets, subject to such reasonable rules and regulations as Lessor may from time to time impose, including the designation of specific areas in which cars owned by Lessee and its employees must be parked. Lessee agrees after notice thereof to abide by such rules and regulations and to use its best efforts to cause its employees and invitees to conform thereto. Lessor may at anytime close or restrict for a reasonable period, any common area to make repairs, to prevent the acquisition of public rights in such areas, or to discourage non-customer parking; and Lessor may do such other acts in and to the common areas as in its judgment may be desirable to improve the convenience thereof. Neither Lessee nor Lessee's employees shall solicit business in the common areas or distribute any handbills or other advertising matter in such areas or place any such handbills or advertising matter in or on any automobiles parked therein without Lessor's written consent.

8. **Repairs and Maintenance.**

8.1. **Lessee's Repair and Maintenance.** Except as provided herein with respect to the specific repair obligations of Lessor, Lessee shall, at its expense, maintain the Premises in a first class condition consistent with other similar Plazas in Monroe County, Florida. The Lessee's obligations herein shall include but not be limited to the following items: All doors, automatic doors, windows, plate glass, store front, light bulbs, walls, ceilings, plumbing, equipment, drains, fixtures, structures, electrical, heating, air conditioning, cooling and refrigeration equipment and all other equipment and apparatus pertaining to the Premises. Lessee shall, at its own expense, keep the Premises in a neat, healthful and safe condition and in accordance and in compliance with all applicable laws, ordinances and other governmental regulations, ordinances and directions during the Term. Any damage to or destruction to the Premises shall be properly and timely repaired, restored and replaced by Lessee.

The Lessee shall, at its own expense, abate any nuisance pertaining to the use of the Premises. Lessee shall, at its own expense, comply with all existing and subsequently enacted laws, fire codes and requirements of applicable governmental and quasi-governmental authorities and requirements and recommendations of insurance underwriters with respect to the Premises or the use and occupancy of the Premises. Lessee shall pay any fees or fines arising from a violation of any such laws or requirements or recommendations by:

- (a) Lessee's use of the Premises;
- (b) the manner of conduct of Lessee's business or the installation of or the operation of its properties on any portion of the Premises;
- (c) any cause or condition created by or through Lessee; or
- (d) the breach of any of Lessee's obligations under this Lease.

Upon vacating the leased premises, Lessee will surrender same to Lessor in as good of condition as received except for ordinary wear and tear.

Except as otherwise provided in this Lease, Lessee shall be responsible for and shall pay all costs and expenses in connection with the operation, maintenance, and repair of the Premises during the Term of this Lease.

9. **Lessor's Repairs and Maintenance.** Lessor shall make all necessary repairs to the structure of the building of which the Premises are a part, including but not limited to the roof, foundations and exterior walls (but excluding glass, plate glass and the exterior of the frames surrounding all windows, doors, plate glass, non-structural store fronts, and signs), and Lessee will be required to make any where same were caused or occasioned by and act or omission or negligence of Lessee, its employees, agents, invitees, licensees, visitors, and contractors.

9.1. If Lessee refuses or neglects to make repairs and maintain the Premises properly as required hereunder and to the reasonable satisfaction of Lessor as soon as reasonably possible after written demand, Lessor may make such repairs without liability to Lessee for any loss or damage that may occur to Lessee's merchandise, fixtures, or other property or to Lessee's business by reason thereof, and upon completion thereof, Lessee, shall pay Lessor's cost for making such repairs plus twenty (20%) percent for overhead and profit, upon presentation of a bill therefore, as additional rent. Said bill shall include interest at the maximum legal rate of interest on said cost from the date of completion of repairs by Lessor. In the event Lessor fails to timely make any repairs for which it is responsible pursuant to the Lease, Lessee shall have the right, upon thirty (30) days' written notice to Lessor, to make such repairs and receive a credit against rent therefore.

10. **"As-Is".** Lessee represents that it has inspected the Premises and is familiar with the condition of each portion of the Premises and accepts the same in its present "AS IS" condition. The Lessor shall not be required to make any alterations, repairs or improvements of any kind whatsoever to prepare the Premises for Lessee's occupancy.

LESSOR MAKES NO REPRESENTATION WHATSOEVER REGARDING THE PREMISES OR LESSEE'S USE OR OCCUPANCY OF THE PREMISES. LESSEE WAIVES, RELEASES, RENOUNCES AND LESSOR DISCLAIMS ANY GUARANTIES AND ANY IMPLIED OR EXPRESSED WARRANTIES OF MERCHANTABILITY, LESSEEABILITY,

HABITABILITY, FITNESS OR FITNESS FOR A PARTICULAR PURPOSE (INCLUDING, WITHOUT LIMITATION, ANY CLAIM FOR ANY DIRECT, INCIDENTAL OR CONSEQUENTIAL DAMAGES RESULTING THEREFROM). LESSOR HAS NOT MADE, NOR HAS LESSEE RELIED ON ANY REPRESENTATION AS TO CONDITION, SAFETY OR SECURITY OF THE PREMISES.

11. **Alterations.** Lessee may make interior, non-structural alterations in the Premises which do not affect building systems and which do not exceed \$50 ("Permitted Alterations") without Lessor's consent. Lessee may not make alterations which are not Permitted Alterations ("Other Alterations") without Lessor's prior written consent or approval, which consent or approval shall not be unreasonably withheld, conditioned or delayed. All alterations made by Lessee shall be made at Lessee's sole cost and expense, including all costs and expenses incurred in obtaining any required governmental consents, permits or approvals. Lessee may perform all alterations with contractors and subcontractors of Lessee's own choosing. Lessor will cooperate with Lessee's efforts to obtain any governmental permits or approvals or consents required for making Permitted Alterations or otherwise approved alterations. Prior to performing any Other Alterations, Lessee shall furnish Lessor with plans and specifications, which shall be subject to Lessor's prior written approval, which shall not be unreasonably withheld, conditioned or delayed. Lessor shall notify Lessee within thirty (30) business days after receipt of the plans and specifications if Lessor does not approve of them and shall specify what it finds unacceptable. In that event, Lessee shall cause the plans and specifications to be revised to remove or correct the work not approved by Lessor and shall resubmit revised plans and specifications for approval. If the Lessor does not notify Lessee of its objections within thirty (30) business days after receiving the plans and specifications, Lessor shall be deemed to have approved them. Lessee shall construct all alterations in accordance with the plans and specifications approved by Lessor, using new and first-class materials and in compliance with all applicable laws, rules, regulations and orders of governmental authorities. Lessee shall obtain and furnish Lessor with copies of all certificates, permits and approvals relating to the alterations that may be required by any governmental authority for the issuance of a certificate of occupancy or other approval of the Premises. At all times while Lessee and Lessee's contractors and subcontractors are constructing Other Alterations, they shall, at their sole cost and expense, effect and maintain or cause to be maintained, with insurance companies reasonably acceptable to and approved by Lessor, the following insurance coverages:

-9-

(a) a builder's insurance policy covering the full replacement cost of the Alterations and materials and supplies delivered to or stored in the Premises for the purpose of being incorporated into the Alterations;

(b) comprehensive general liability insurance in form and amount reasonably satisfactory to Lessor;

(c) workers' compensation coverage in compliance with the Florida Workers' Compensation Act and employer's liability insurance with a limit of not less than \$500,000 per occurrence for any one accident or disease; and

All property insurance required under this Section 13 shall contain waivers of subrogation in favor of Lessor, and all liability insurance shall designate Lessor as an additional insured. Certificates of insurance evidencing compliance with these insurance requirements shall be delivered to Lessor on or before commencement of the Other Alterations. Lessee shall construct at its sole cost and expense any Alterations with diligence and continuity and in a good and workmanlike manner and shall: (i) comply with all laws, ordinances and governmental regulations in its construction of the Alterations; and (ii) indemnify and hold Lessor harmless from all loss, cost and expense, including, but not limited to, reasonable attorneys' fees and court costs through all trial and appellate levels on account of Lessee's construction of the Alterations or any injury to persons or damage to property occasioned by Lessee's construction of the Alterations. The Lessee shall provide Lessor with all applicable partial releases of lien executed by contractors, subcontractors and materialmen contemporaneous with the payment or draw request under Lessee's construction contract. The Lessee shall obtain and shall provide Lessor with general contractor's final contractor's affidavit, releases and indemnities contemporaneous with final payment to be made to the general contractor and all subcontractors and materialmen. All alterations, improvements and additions made by Lessee shall immediately become the property of Lessor and shall remain on the Premises at the expiration or earlier termination of the Lease, except Lessor, on written notice to Lessee, may require that the Lessee remove any such alterations, improvements and additions made by Lessee on any termination of the Lease, at which time the Lessee shall remove any such alterations, improvements and additions at its sole cost and expense on or before the termination of this Lease.

12. **Damage and Condemnation.**

(a) **Damage.** If the Premises or the Building shall be destroyed by fire or other cause, or be so damaged by fire or other cause that they are untenable and cannot be rendered tenable within a reasonable time from the date of the damage, considering the extent of the damage, this Lease may be terminated by Lessor by written notice given to Lessee within thirty (30) days after the event causing untenability, in which event rent shall cease as of the date of untenability and both parties shall be relieved of all further liability under this Lease accruing after the cancellation date. If the damage or destruction is not sufficient to permit a termination of the Lease as above provided, a proportionate reduction shall be made in the rent corresponding to the time during which, and applicable to the portion of the Premises of which, Lessee shall be deprived of possession. The decision of a licensed Florida architect or engineer selected by Lessor, and compensated by both parties in

equal proportions, and certified in writing to Lessor and Lessee shall conclusively be deemed binding on the parties as to:

- (i) whether the Premises or Building are rendered untenable;
- (ii) whether the Building or Premises can be rendered untenable within a reasonable time;
- (iii) the percentage of the Premises rendered untenable and the resulting percentage by which rent and other charges under this Lease should abate during the period of untenability; and
- (iv) the date on which the Premises are restored to Lessee ability.

If damages to Lessee's building in excess of fifty (50%) percent of the value thereof shall occur within the last three years of the initial term or any of the option extension periods provided for herein, the obligation of the Lessor to restore the Premises shall not arise unless Lessee shall give notice to Lessor within ten (10) days after such damage of its desire extend the Lease for an additional period so as to expire not less than five (5) years from the date of such damage, and on the same conditions and for the same rentals as provided in the Lease. The Lease shall continue and the remaining option periods if any, shall be construed to follow

upon the end of such extended term. Failing such notice to extend, Lessor at its option shall have the right to terminate this Lease or to restore the Premises, in which latter event this Lease shall continue for the remainder of the primary Lease term.

In no event shall Lessor be liable to Lessee for any damages resulting to Lessee from the happening of such fire or casualty or from the repairing or reconstruction of the Premises, or from the termination of this Lease as provided in this Section, nor shall Lessee be relieved by fire or casualty from the Lessee's obligations under this Lease except to the extent and on the conditions expressly stated in this Section.

(b) Condemnation. In connection with any condemnation of the Premises:

(1) If at any time during the Term of this Lease all or substantially all of the Premises shall be taken in the exercise of the power of eminent domain by any sovereign, municipality or other public or private authority, then this Lease shall terminate on the date of vesting of title in that authority and any prepaid Rent shall be apportioned as of that date. Substantially all of the Premises shall be deemed to have been taken if, in Lessor's and Lessee's reasonable judgment, the remaining portion of the Premises shall not be of sufficient size to permit the construction and operation of buildings on the Premises of substantially the same size as the existing buildings.

(2) If less than all or substantially all of the Premises shall be taken in the exercise of the power of eminent domain by any sovereign, municipality or other public or private domain by any sovereign, municipality or other public or private authority, then this Lease shall continue in force and effect and Lessee shall

proceed with reasonable diligence at its own expense to carry out any necessary repairs and restoration so that the remaining portion of the Premises shall constitute a complete structural unit or units which can be operated on an economically feasible basis under the provisions of this Lease. All repair and restoration shall be carried out by Lessee in strict accordance with the restoration provisions of Section 16 of this Lease. The award or awards for any partial taking shall be paid to Lessor and shall be disbursed for the repair and restoration of the Premises in accordance with Section 16.

-11-

(3) The award or awards for any taking of all or substantially all of the Premises shall be paid to Lessor, provided that Lessee shall have the right to pursue its own separate award for the value, immediately prior to the taking, of loss of equipment, loss of business, loss of its leasehold interest, and moving expenses, to the extent the foregoing does not reduce any award to be received by Lessor.

(4) If the temporary use of the whole or any part of the Premises shall be taken at any time during the Term of this Lease in the exercise of the power of eminent domain by any sovereign, municipality or other authority, the Term of this Lease shall not be reduced or affected in any way and Lessee shall continue to pay in full the Rent, and the entire award for such taking shall be paid to Lessor, to be applied and disposed of as provided below. Lessor shall credit against the next Rent payment due from Lessee that portion of the award paid for the use and occupancy of the Premises. That portion of the award that compensates for physical damage to the Premises occasioned by the taking shall be held by Lessor, and used to reimburse Lessee for costs of restoration and repair of the portion of the Premises so damaged. Lessee shall perform all of the restoration and repair in accordance with the terms of Section 16.

13. **Entry, Inspection and Other Rights Reserved To Lessor.** Lessee will allow Lessor to enter the Premises for inspection or for any other purpose which Lessor deems necessary for the safety, comfort or preservation of the Premises or Building. During business operations, Lessor may close entrances, doors, corridors, elevators or other facilities, all without liability to Lessee by reason of interference, inconvenience or annoyance. Lessee will permit Lessor at any time within the earlier of (i) thirty (30) days prior to the expiration of this Lease or (ii) failure of Lessee to cure a default within seventy-two (72) hours of notice by Lessor to bring prospective lessees on the Premises for purposes of inspection and to put or keep on the doors or windows thereof a "For Rent" or "For Sale" notice. In furtherance of such rights, Lessor shall retain a key to the Premises and Lessee shall not install any new locks to the Premises without the prior written consent of Lessor, unless Lessee furnishes Lessor with a copy of such key. No entry pursuant to this Paragraph shall in any way be deemed a breach of the covenant of quiet enjoyment. Lessor reserves the right to change the name and/or street address of the Building without liability of Lessor to Lessee. In the

event of an emergency, Lessee hereby grants to Lessor the right of enter the Premises at any time.

14. **Personal Property.** For purposes of this Lease, the term "Lessee's Property" shall mean all office furniture and equipment, movable partitions, communications equipment, inventory, and other articles of movable personal property owned or leased by Lessee and located in the Premises, but shall not include any permanently attached fixtures ("Lessor's FF&E").

All Lessee's Property shall be and remain the property of Lessee throughout the Term of this Lease and may be removed by Lessee at any time during the Term. All Lessor's FF&E shall be and remain the property of Lessor throughout the Term of this Lease, unless specifically purchased by and conveyed to Lessee after the Commencement Date, and may not be removed from the Premises without Lessor's prior consent. On or prior to the expiration of this Lease, Lessee shall remove all Lessee's Property from the Premises without leaving any noticeable damage to the Premises, but shall leave Lessor's FF&E in the Premises. If Lessee

-12-

leaves noticeable damage to the Premises as a result of Lessee's removal of Lessee's Property, or if Lessee has noticeably damaged Lessor's FF&E (excluding reasonable wear and tear), Lessor shall give Lessee written notice and Lessee shall have ten (10) days after that to remove or repair the damage, after which time, Lessor may repair the damage and Lessee shall reimburse Lessor for all costs and expenses reasonably incurred by Lessor in repairing the damage. Notwithstanding the foregoing, any built-in items placed on the Premises by Lessee shall become a part of the Premises and the property of Lessor.

15. **Loss or Damage to Tenant's Property.** Lessor shall not be liable for any damage to property of Lessee or of others located on the Premises, nor for the loss of or damage to any property of Lessee or of others by theft or otherwise. Lessor shall not be liable for any injury or damage to persons or property resulting from fire, explosion, falling walls or ceilings, steam, gas, electricity, water, rain, or leaks from any part of the Premises or from the pipes, appliances, plumbing works, or from the roof, street, subsurface, or from any other place, by dampness, or by any other cause of whatsoever nature. Lessor shall not be liable for any such damage caused by other Lessees or persons in the Premises, occupants of property adjacent to the Plaza or the public, or for damage caused by operations in construction of any private, public, or quasi public work. All property of Lessee, kept or stored on the premises, shall be at Lessee's risk, and Lessee shall hold Lessor harmless from all claims arising out of damage to same, including subrogation claims by Lessee's insurance carriers, unless such damage shall be caused by the willful act or gross neglect of the Lessor.

16. **Extension Terms.** Provided Lessee is not in Default at the time of exercise beyond any applicable notice and cure period, Lessee shall have the option to extend the original Term of this Lease, subject to all of the provisions of this Lease, for **five (5) years** (individually, an "Extension Term" and collectively the "Extension Terms"), each such period commencing on the expiration of the Term then in effect. Then Base Rent payable by Lessee during any Extension Term shall be determined as set forth as follows: **See Rent Schedule.** With respect to each such Extension Term, Lessee may exercise its option to extend by giving Lessor written notice, in the manner prescribed herein, of Lessee's exercise of the option to extend at any time not less than 90 days before the end of the Term then in effect. After the exercise of any option to extend, all references in this Lease to the Term of this Lease shall be considered to mean the Term as extended, and all references to the end of the Term shall be considered to mean the end of the Term as extended. If requested by Lessee, Lessor shall execute documents that Lessee shall from time to time reasonably request to evidence the dates of the extended Term. If Lessee exercises its option by giving appropriate notice, the Term of this Lease shall be automatically extended on the same terms and conditions set forth in this Lease for the applicable Extension Term without execution of an extension or renewal Lease or any other document, but in no event may the Term be extended beyond the Initial Term.

(i) Conditions of Extension. Lessee's right to exercise the option to extend for each Extension Term is subject to satisfaction of the following conditions precedent: (a) this Lease shall be in effect at the time notice of exercise of an option to extend is given and on the last day of the Term of the Lease prior to its extension; (b) Lessee shall not be in default at the

-13-

time notice of exercise of the option is given or on the last day of the Term of the Lease prior to its extension beyond any applicable notice and cure period; and (c) the notice of exercise of the option to extend shall be delivered in accordance with the terms of this Lease. The options to extend the Term provided in this Section shall immediately and automatically terminate and shall be of no further force or effect in the event that this Lease is terminated.

17. **Insurance.**

The Lessee is a state agency subject to limited liability under §768.28, F.S., and maintains adequate insurance to respond to any liability in excess thereof. To the extent authorized by §768.28, F.S., Lessee shall indemnify, defend and hold harmless Lessor, and Lessor's agents, trustees, executors, personal representatives, general partners, limited partners, and attorney-in-fact, of and from any and all fines, claims, demands, liability, cost or expense (including but not limited to attorney's fees) and causes of action, of every nature whatsoever brought by any person or entity, arising or growing out of, directly or indirectly, the following: (i) the occupation or use of the Premises, the Building, or the Property and every part thereof, by Lessee, (ii) any breach or violation of this Lease by Lessee, or (iii) the conduct of Lessee's business. For all purposes of the indemnification granted herein, the claims, demands, acts or

omissions of Lessees contractors, employees, agents, servants, guests, clients and invitees shall be deemed to be those of the Lessee. In any such event, the comparative negligence on the part of the Lessor or its representatives shall not in any way limit or effect Lessee's obligation under this indemnification.

18. Prohibition against Activities Increasing Fire Insurance Rates. Lessee agrees not to use the Premises in any manner, even for the purposes for which the premises are leased, that will increase risks covered by insurance on the building where the premises are located,

-16-

so as to increase the rate of insurance on the premises, or to cause cancellation of any insurance policy covering the building. Lessee further agrees not to keep on the premises, or permit to be kept, used, or sold on the premises, anything prohibited by the policy

of fire insurance covering the premises. Lessee agrees to comply, at his or her own expense, with all requirements of insurers necessary to keep in force the fire and public liability insurance covering the premises and building.

19. **Liability.** Lessor shall not be responsible or liable for the theft, loss or damage to person or property in, on or about the Premises, or the Building, except for such loss or damage as is caused by Lessor or its employees and agents. Lessee acknowledges and agrees that Lessor is not responsible for the security of the Premises or the Building in general. Lessor shall not be liable for any injury or damage to persons or property resulting from fire, explosion, falling plaster, gas, electricity, water, rain or leaks from any part of the Building or by any other cause whatsoever, nor shall Lessor or its agents be liable for any such damage caused by other lessees or persons in the Building; nor shall Lessor be liable for any latent defect in the Premises or in the Building.

20. **Indemnity.** Except as may otherwise be provided in this Lease, and subject to the limitations of §768.28 F.S., Lessee shall indemnify and hold harmless Lessor, its employees, officers, directors, managers, agents, shareholders, partners or other owners from and against any and all third-party claims arising from or in connection with: (i) the conduct or management of the Premises or of any business on the Premises, or any condition created in or about the Premises during the term of this Lease, unless created by Lessor, its employees, officers, directors, managers, agents, shareholders, partners or other owners, invitees or contractors, or any person or entity acting at the instance of Lessor; (ii) any act, omission or negligence of Lessee or any of its sub lessees or licensees or its employees, officers, directors, managers, agents, shareholders, partners or other owners, invitees or contractors; or (iii) any accident or injury or damage whatever, not caused by Lessor or any person or entity acting at the instance of Lessor occurring in, at or on the Premises.

21. **Negation of Personal Liability.** Notwithstanding anything to the contrary contained in this Lease, Lessee agrees that Lessor (and, in case Lessor is

a joint venture, partnership, tenancy in common, association or other form of joint ownership, the partners, members and employees of any such joint venture, partnership, tenancy-in-common, association or other form of joint ownership) shall have absolutely no personal liability with respect to any of the provisions of this Lease, or any obligation or liability arising from or in connection with the provisions of this Lease. Lessee shall look solely to Lessor's equity in the Premises for the satisfaction of any remedies of Lessee against Lessor including, without limitation, the collection of any judgment (or other judicial process) requiring the payment of money by Lessor in the event of any default or breach by Lessor with respect to any of the terms and provisions of this Lease to be observed and/or performed by Lessor, subject, however, to the prior rights of any holder of any mortgage covering all or part of the Premises and no other assets of Lessor or any principal or partner of Lessor shall be subject to levy, execution or other judicial process for the satisfaction of Lessee's claim and in the event Lessee obtains a judgment against Lessor, the judgment docket shall be so noted. This exculpation of liability shall be absolute and without exception whatsoever. This section shall inure to the benefit of Lessor's successors and assigns and their respective principals.

-17-

22. **Rules and Regulations.** The rules and regulations shall be binding on the Lessee on delivery of a copy of them to Lessee. Lessor shall have the right to establish, modify and/ or rescind reasonable rules and regulations governing the use and general management of the Plaza. The rules and regulations as may be adopted by Lessor after the execution of this Lease for the safety, cleanliness and operation of the Building and the preservation of good order therein and for the most efficient use by all lessees, agents, employees, invitees and visitors of the automobile parking spaces provided by Lessor, if any, are expressly made a part of this Lease and Lessee agrees to comply with such rules and regulations. No rules and regulations shall prohibit the reasonable use of the Premises by Lessee its agents, employees, invitees and visitors for the purposes permitted by this Lease.

The Lessor shall not be responsible to Lessee for any nonobservance of such rules and regulations by any other lessee of the Building.

23. **Assignment and Subletting.** Lessee shall not assign, sublet, mortgage, pledge, or hypothecate this Lease, or any interest therein, nor shall Lessee permit the use of the Premises by any person or persons other than Lessee, nor shall Lessee sublet the Premises, or any part of the Premises, without the written consent of Lessor; Any sale of stock of Lessee (if a corporation), assignment of partnership interest (if a partnership), assignment of beneficial interest (if a trust), or other device which has the effect of transferring the practical benefits of this Lease from the parties currently controlling Lessee, shall be a prohibited transfer. If Lessee sublets, assigns or transfers this Lease with the permission of the Lessor, the Base Rent may be subject to an increase if rent is below market value at the time of transfer.

24. **Environmental Matters.**

a. Lessee's Obligations. During the Initial Term and any Extension Term, Lessee shall not do anything during the Term that violates any Environmental Law (defined below). Lessee shall indemnify, defend and hold harmless Lessor, its employees, officers, directors, managers, agents, shareholders, partners or other owners, from and against any and all losses, claims, suits, damages, judgments, penalties and liability including, without limitation: (i) all out-of-pocket litigation costs and reasonable attorneys' fees; (ii) all damages (including consequential damages), directly or indirectly arising out of the use, generation, storage, release or threatened release or disposal of Hazardous Materials by Lessee or any of its sub lessees or licensees or its employees, officers, directors, managers, agents, shareholders, partners or other owners, invitees or contractors; and (iii) the cost of and the obligation to perform any required or necessary repair, clean-up, investigation, removal, remediation or abatement, and the preparation of any closure or other required plans, to the full extent that any of the foregoing is attributable to the use, generation, storage, release or threatened release or disposal of Hazardous Materials by Lessee or any of its sub lessees or licensees or its employees, officers, directors, managers, agents, shareholders, partners or other owners, invitees or contractors.

b. Lessor's Obligations. Lessor shall indemnify, defend and hold harmless Lessee, its employees, officers, directors, managers, agents, shareholders, partners or other owners, from and against any and all losses, claims, suits, damages, judgments, penalties, and liability including, without limitation: all (i) out-of-pocket litigation costs and reasonable attorneys' fees; (ii) all damages, including consequential damages, directly or indirectly arising out of the release or disposal of Hazardous Materials on, under or in the Premises, or any

-18-

violation of Environmental Laws, caused by Lessor, or which occurred prior to the Commencement Date of this Lease.

c. Hazardous Materials Defined. For the purpose of this Section 14, Hazardous Materials shall include but not be limited to substances defined as "hazardous substances," "hazardous materials," or "toxic substances" in the Comprehensive Environmental Response, Compensation and Liability Act of 1980, as amended, 42 U.S.C.A. §§ 9601 et seq.; the Hazardous Materials Transportation Act, 49 U.S.C.A. §§ 1801 et seq.; the Resource Conservation and Recovery Act, 42 U.S.C.A. §§ 6901 et seq.; the Occupational Safety and Health Act of 1970, as amended; the common law; and all state, local or federal laws, rules, regulations, policies, guidances and orders pertaining to environmental, public health or welfare matters, as the same may be amended, interpreted or supplemented from time to time (collectively, the "Environmental Laws"). Any terms mentioned in this Lease which are defined in any applicable Environmental Laws shall have the meanings ascribed to those terms in the Environmental Laws, provided, however, that if any such laws are amended so as to broaden any term defined in them, the broader meaning shall apply subsequent to the effective date of the amendment.

(d) Survival. The provisions of this Section 28 shall survive the expiration or sooner termination of this Lease.

25. **Utilities and Services.** Electricity, water and sewer, trash removal and any other utilities for the Premises shall be separately metered and billed when possible in the name of Lessee, and the cost of those utilities, together with the cost and performance of janitorial, telephone, and security service for the Premises shall be Lessee's sole responsibility. In the event that the utilities cannot be separately metered, Lessee will pay its pro-rata share of total Building expenses to provide such services. Lessor shall not be liable to Lessee for any interruption in the service of any utility. No interruption or failure of such utilities or services shall relieve Lessee from the obligation to pay the full amount of rent and other charges reserved in this Lease, nor shall the same constitute a constructive or other eviction of Lessee.

Lessee shall promptly pay for all public utilities rendered or furnished to the Premises from and after the date Lessee assumes possession of said Premises, including but not limited to, water, sewer, gas, electricity, heat and air conditioning. Lessor shall not be liable in damages or otherwise for any interruption in the supply of any utility to the Premises nor shall any such interruption constitute any ground for an abatement of any of the rents reserved hereunder. Lessee shall not at any time overburden or exceed the capacity of the mains, feeders, ducts, conduits, or other facilities by which such utilities are supplied to, distributed in, or serve the Premises. If Lessee desires to install any equipment which shall require additional utility facilities or utility facilities of a greater capacity than the facilities to be provided by Lessor, such installation shall be subject to Lessor's prior written approval of Lessee's plans and specifications therefore. If approved by Lessor, Lessee agrees to pay Lessor, on demand, the cost for providing such additional utility facilities or utility facilities of greater capacity.

Except as otherwise provided in this Section, Lessor shall not be responsible for providing any meters or other devices for the measurement of utilities supplied to the Premises. Lessee shall make application for and arrange for the installation of all such

-19-

meters or other devices and Lessee shall be solely responsible for and promptly pay, as and when the same become due and payable, all charges for water, sewer, electricity, gas, telephone and any other utility used for or consumed in the Premises.

Should landlord elect or be required to supply any utility services used or consumed in the Premises, Lessee agrees to pay as additional rent an amount not to exceed that which the utility company would have charged Lessee for furnishing such utilities. If Lessor is furnishing tenant any utility or utilities hereunder, Lessor, at any time, at Lessor's option and upon not less than thirty

(30) days prior notice to Lessee, may discontinue such furnishing of any such utility to the Premises, and in such case, Lessee shall contract with the public service company supplying such utility service for the purchase and obtaining by Lessee of such utility directly from such public service company.

26. **Notices.** In every instance where it shall be necessary or desirable for the Lessor to serve any notice or demand on the Lessee, it shall be sufficient: (a) to deliver or cause to be delivered to the Lessee at the Premises a written copy of the notice or demand, or (b) to send a written copy of the notice or demand by United States certified mail, postage prepaid, addressed to the Lessee at the Premises, or (c) to leave a written copy of the notice or demand in or on the Premises or to affix the same on any door leading into the Premises, in which event the notice or demand shall be deemed to have been served at the time the copy is so left or affixed. All notices or demands shall be signed by the Lessor or its agent. Where the Lessee desires to serve notice or demand on the Lessor, such notice or demand shall be sent certified mail return receipt requested, postage prepaid to Lessor at the following address:

**Hillsborough Center Associates, LLC.
c/o Coldwell Banker Commercial
3132 Flagler Avenue
Key West, FL 33040**

Any notice to be given to Lessee prior to the commencement or subsequent to Lessee's occupancy under this Lease shall be sent to Lessee at:

**16th Judicial Circuit Drug Court
3100 B Flagler Avenue
Key West, FL 33040**

And

**Monroe County BOCC
3583 S. Roosevelt Blvd.
Key West, FL 33040**

Except as otherwise provided in this Lease, notice given by personal delivery shall be effective as of the date of delivery; notice mailed shall be effective as of the second day (not a Saturday, Sunday or legal holiday) next following the date of mailing; notice by Federal Express Overnight Service shall be effective on the next business day following the date of sending.

27. **Default.**

(a) Default by Lessor. Notwithstanding any other provision of this Lease, if Lessor

-20-

by any act or omission is in breach or default of this Lease and the breach or default continues for a period of ninety (90) consecutive days after Lessee notifies Lessor in writing of the breach or default, or the default is not capable of being cured within the ninety (90) day period and if Lessor shall not have

commenced to cure the breach or default within the ninety (90) day period and is preceding to cure same diligently within a reasonable period of time, not to exceed an additional ninety (90) days, Lessee shall have all remedies available to Lessee at law or in equity against Lessor but Lessee shall not be entitled to punitive or consequential damage.

(b) Default by Lessee. Lessee agrees that any of the following events shall be a default ("Default") under this Lease:

(i) if any false or materially misleading financial report or statement is furnished or made by or on behalf of Lessee or any guarantor of any of Lessee's obligations under this Lease; or

(ii) if any Base Rent, Percentage Rent, or Lessee's Share of Operating Costs is in arrears, or Lessee fails to pay the same as and when it becomes due; or

(iii) if Lessee or any guarantor of any of Lessee's obligations under this Lease shall fail to perform or observe or breach any covenant, condition or agreement to be performed or observed by such party under this Lease or under any guaranty agreement (other than the payment of Rent); or

(iv) if Lessee or any guarantor of Lessee's obligations under this Lease or any affiliate of any of them shall be in breach of any other lease with Lessor or any affiliate or in breach of or in default in the payment and performance of any obligation owing to Lessor or any affiliate, whether or not related to this Lease and howsoever arising, whether by operation or law or otherwise, present or future, contracted for or acquired, and whether joint, several, absolute contingent secured, unsecured, matured or unmatured; or

(v) if Lessee or any guarantor of any of Lessee's obligations under this Lease shall cease doing business as a going concern, make an assignment for the benefit of creditors, generally not pay its debts as they become due, admit in writing its inability to pay its debts as they become due, become insolvent (i.e. greater liabilities than assets), or take any action looking to its dissolution or liquidation; or

(vi) if Lessee or any guarantor of Lessee's obligations should file for relief, or have filed against them, an action under any provision of any state or federal bankruptcy or insolvency law; or

(vii) if Lessee shall abandon or vacate the Premises; or

(viii) if Lessee fails to pay all charges for gas, sewer, electricity and other utilities which are separately metered for the Premises within thirty (30) days after such are due; or

(ix) if Lessor determines, in its sole discretion, that unpleasant noises, odors or other nuisance or nuisances emanate from the Premises and Lessee does not take immediate steps to eliminate such noises, odors or nuisances or fails to eliminate such noises, odors or nuisances permanently within thirty (30) days of notice from Lessor; or

(x) if Lessor has sent Lessee at any time during the term of this Lease, two notices for the same type of lease violation irrespective of whether such violation may have been cured at the time of receipt of the notice; or,

(xi) Lessee fails to continuously occupy the Premises and regularly

-21-

conduct its business in one hundred (100%) percent of the space within the Premises (even if Lessee continues to pay rent).

In the event of any such Default, Lessor may, at its option, without notice, elect any of the following remedies:

(a) Re-take and recover possession of the Premises, terminate this Lease, and retain Lessee's security deposit.

(b) Re-take and recover possession of the Premises, without terminating this Lease, in which event Lessor may re-rent the Premises as agent for and for the account of Lessee and recover from Lessee the difference between the rental specified in this Lease and the rent provided, in such re-rental, less all of Lessors costs and expenses of re-renting, including, without limitation, attorney's fees plus all other sums due under this Lease.

(c) Permit the Premises to remain vacant, in which event Lessee shall continue to be responsible for all rental and other payments due under this Lease.

(d) Re-take and recover possession of the Premises, and accelerate and immediately collect all Base Rent Percentage Rent and Lessee's share of Operating Cost due under this Lease for the balance of the term of this Lease.

(e) Take any other action as may be permitted at law or in equity. All of the Lessor's remedies contained in this Lease shall be cumulative, and election by Lessor to

take any one remedy shall not preclude Lessor from taking any other remedy. The Lessor may, at its option, apply any sums received from the Lessee against any amount due and payable by the Lessee under this Lease in such manner as the Lessor sees fit and regardless of the express purpose for which the tender was made and regardless of any endorsement placed on the check by which payment is made.

28. **Attorney's Fees and Costs.** Lessee shall pay to Lessor all costs, charges and expenses including reasonable attorney's fees at all tribunal levels, incurred by

Lessor in enforcing this Lease or any covenant of this Lease or in the collection of any rent or other sum of money, becoming due under this Lease or in the recovery of possession of the Premises or reletting of the Premises, in the event of the breach by Lessee of any of the terms or provisions of this Lease.

29. **Surrender Of Demised Premises.** Lessee agrees to surrender the Premises at the termination of the tenancy in the same condition as received by Lessee, reasonable use and wear excepted.

30. **Holding Over.** In case of holding over by Lessee after expiration or termination of this Lease, Lessee shall be deemed a lessee at sufferance and will be liable for Lessor's damages due to such holdover and, in addition, shall pay for each month of such holdover period double the amount of the rent and other charges accruing for the last month during the term of this Lease. No holding over by Lessee after the term of this Lease shall operate to extend the Lease, except that Lessor, at its option, by written notice to Lessee, may elect to consider Lessee's withholding of the Premises as a holdover of this Lease and treat Lessee as a lessee for another year on the same terms and conditions as are contracted in

-22-

this Lease, in which case the total rental shall be double the rate stipulated in this Lease. The foregoing provisions of this section are in addition to and do not affect Lessor's right of re-entry or any other right of Lessor hereunder or as provided by law.

31. **Trial By Jury and Litigation.** Lessee and Lessor waive all rights to a jury trial of any issue or controversy arising under this Lease, related to the Premises or the relationship of the parties created by this Lease. The laws of the State of Florida shall govern the validity, performance and enforcement of this Lease. Lessor and Lessee submit to the non-exclusive personal jurisdiction in the State of Florida, the courts of Florida and the United States District Courts sitting in Florida, for the enforcement of this Lease. Lessor and Lessee each waive any and all personal rights under the law of any jurisdiction to object on any basis (including, without limitation, inconvenience of forum) to jurisdiction or venue within the State of Florida for the purpose of litigation to enforce this Lease. Any litigation arising between the parties shall be maintained solely in the state court of competent jurisdiction in Monroe County, Florida.

32. **Non-waiver of Breach.** Lessor's failure to take advantage of any default or breach of covenant on the part of Lessee shall not be construed as a waiver of the breach, nor shall any custom or practice which may grow between the parties in the course of administering this Lease be construed or to waive or to lessen the right of Lessor to insist on the strict performance by Lessee of any term, covenant or condition of this Lease, or to exercise any rights of Lessor on account of any such default. A waiver of a particular breach or default shall not be deemed to be a waiver of the same or any other subsequent breach or default. The acceptance of rent shall not be, or be construed to be, a waiver of any breach of any term, covenant or condition of this Lease. The presentation of any rent or other charge under this Lease in the form of a check marked by Lessee to constitute a waiver of any default shall not constitute such waiver even though endorsed and cashed by Lessor unless Lessor expressly agrees to waive such default by separate written instrument. No surrender of the Premises for the remainder of the term of this Lease shall operate to release Lessee from liability under this Lease.

33. **Subordination By Lessee.** This Lease and Lessee's rights under this Lease, are made expressly subject and subordinate to all security agreements, mortgages, ground or underlying leases, or like instruments resulting from any financing or refinancing affecting the Premises or Building which are currently in existence or which may be subsequently created by Lessor, or its successors or assigns, including all extensions and renewals, substitutions, and amendments thereof, and to all advances made or to be made under same (collectively the "Mortgage"). This provision shall be self-operative without the execution of any further instruments. Lessee agrees to execute any instrument or instruments which the Lessor may deem necessary or desirable to further evidence the foregoing subordination. Lessee irrevocably appoints Lessor as attorney-in-fact for Lessee with full power and authority to execute and deliver in the name of Lessee any such instrument which appointment shall be deemed coupled with an interest and irrevocable. Lessee further agrees to make such reasonable modifications to this Lease (not increasing Lessee's obligations under this Lease) as may be requested by the holder of any such Mortgage (the "Mortgagee"). Lessee agrees that in the event of any act or omission by Lessor which could constitute a default by Lessor or

-23-

give Lessee the right to terminate this Lease or claim a partial eviction, Lessee shall not exercise any such right until (i) Lessee notifies Lessor in writing of such default and Lessor fails to cure such default within thirty (30), or if such default cannot reasonably be cured within such thirty (30) days; and (ii) until every holder of any Mortgage is notified in writing of such default and fails to commence to cure such default within thirty (30) days after all of Lessor's periods to cure such default have expired. Lessee further agrees to execute any non-disturbance or attornment agreement requested by any mortgagee or ground lessor.

34. **Attornment.** In the event of any foreclosure of any mortgage encumbering the Building, or deed in lieu of a mortgage, or sale of the Building, Lessor shall be released from all liability under this Lease and Lessee shall attorn to the purchaser at the time of any such foreclosure or sale and recognize the purchaser as the Lessor under this Lease.

35. **Estoppel Certificate.** Within thirty (30) days after request by Lessor, Lessee shall deliver to Lessor, in a form satisfactory to Lessor, a certificate certifying:

- (i) the good standing and absence of default under this Lease;
- (ii) the absence of set-offs to charges under this Lease;
- (iii) the validity and completeness of a copy of this Lease and all amendments to be attached to the certificate;
- (iv) the amount of pre-paid rent;
- (v) the amount of security deposit;
- (vi) the commencement and expiration dates of this Lease;

(vii) the dates and amounts of the last made and next due rental installments; and

(viii) such other matters as Lessor shall request.

36. **Time.** It is understood and agreed between the parties that time is of the essence of this Lease, and to all of its terms, conditions and provisions.

37. **Transferability By Lessor.** Lessor shall have the right to transfer and assign, in whole or in part, all and every feature of its rights and obligations under this Lease as part of a conveyance of the Building and underlying property, and at the time of the assignment of this Lease or conveyance of the Building, the Lessor named in this Lease shall be released from all subsequent obligations or liabilities under this Lease, and Lessor's successor in interest shall become the new Lessor under this Lease and responsible to Lessee for all obligations of Lessor.

38. **Amendment Of Lease.** This Lease may not be altered, changed, or amended, except by an instrument in writing, signed by the party against whom enforcement is sought. This Lease and any exhibits contain the entire agreement reached in all previous negotiations between the parties and there are no other representations, agreements or understandings of any kind, either written or oral, except as specifically set forth here.

39. **Quiet Enjoyment.** Lessee shall and may peaceably have, hold and enjoy the Premises subject to the terms of this Lease and provided Lessee pays the rental specified in this Lease and performs all the covenants and agreements contained in this Lease.

-24-

40. **Kiosks and other Free Standing Buildings.** In addition to the rights set above, Lessor shall further have the right to construct and to lease free-standing buildings in the common areas.

41. **Signage and Window Treatments.** Except with the prior written consent of Lessor, the Lessee shall not erect, install, display, inscribe, paint or affix any window treatments, signs, lettering or advertising mediums, in, on, or above any exterior or interior portion of the Premises including, without limitation, the store front as well as the exterior glass surfaces of the store front. Should Lessor consent to Lessee's request herein, then Lessee, at its expense and subject to its obtaining any required governmental permits and approvals, may place, maintain, repair and replace within the Premises any signs that Lessee deems appropriate or necessary. Lessor shall cooperate with Lessee's efforts to obtain any permit, approval or consent necessary or desirable in connection with the installation of any sign. Lessee further agrees to maintain such sign, awning, canopy, decoration, lettering advertising or other things as may be approved by Lessor in good condition and repair at all times.

42. **Displays.** The Lessee may not display or sell merchandise or allow grocery carts or other similar devices within the control of Lessee to be stored or to remain outside the defined exterior walls and permanent doorways of the Premises. Lessee further agrees not to install any exterior lighting, amplifiers or similar devices or use in or about the Premises any advertising medium which may be heard or seen outside the Premises, such as flashing lights, searchlights, loudspeakers, phonographs or radio broadcasts.

43. **Parking.** Lessee shall be responsible, at Lessee's sole cost and expense, for the payment of all parking, impact or other fees related to Lessee's use or occupancy of the Premises or Building.

44. **Alarm Box.** Should Lessee install an alarm box, that alarm box must not be visible from the street.

45. **Brokerage.** Lessee represents and warrants that there are no brokers involved in this Lease transaction except Coldwell Banker Schmitt Real Estate Co. to whom commission shall be paid by Lessor by separate agreement. Lessee agrees to indemnify, defend and hold Lessor harmless from and against all costs, claims, liabilities, expenses or damages of any kind whatsoever (including but not limited to attorney's fees and costs at all tribunal levels) arising from any such brokerage claim made by any one other than the above named broker.

46. **Recording.** Lessee or anyone claiming under Lessee shall not record this Lease or any memorandum of it without the prior written consent of Lessor. Lessor shall be entitled, but not required, to record a short form of memorandum (the "Memorandum") of this Lease. Within ten (10) days of written request by Lessor, Lessee shall execute Lessor's form Memorandum and promptly return it to Lessor.

-25-

47. **Authority.** If Lessee is a corporation, Lessee warrants that it is a duly authorized and existing corporation, qualified to do business in the state of Florida, and Lessee has full right and authority to enter into this Lease, and each of the persons signing on Lessee's behalf are authorized to do so. Lessee shall provide such proof of its corporate or legal entity status and qualification to do business at such time(s) and in such form(s) as Lessor may reasonably require, although Lessor has no duty of inquiry in this regard. In addition, Lessee warrants that it is not necessary for any other person, firm, corporation, or entity to join in the execution of this Lease to make the Lessee's execution complete, appropriate and binding.

If this Lease is made by another form of legal entity, the Partners, Trustees or other governing body thereof, has signed or duly authorized and directed the signing of all papers and taken all actions necessary for the signing and delivery

of this Lease. This Lease is represented and warranted to be valid and enforceable against Lessee without further inquiry from Lessor.

48. **Severability.** Inapplicability, invalidation, or unenforceability of any one or more of the provisions of this Lease or any instrument executed and delivered pursuant to this Lease, by judgment, court order or otherwise, shall in no way affect any other provision of this Lease or any other such instrument, which shall remain in full force and effect.

49. **Effect of Unlawful Retention of Premises By Other.** If Lessor is unable to deliver possession of the Premises to Lessee on the Commencement Date because of the unlawful retention of possession by a previous lessee, Lessor shall not be liable to Lessee in damages or otherwise and this Lease shall not terminate, but Lessee shall have no obligation to pay rent until possession of the Premises is delivered to Lessee.

50. **Binding Effect.** Submission of this instrument for examination does not constitute a reservation of or option for the Premises or an offer to rent the same. The instrument becomes effective as a Lease only on execution and delivery by both Lessor and Lessee.

51. **Successors and Assigns.** All of the terms and agreements contained in this Lease shall be binding on and inure to the benefit of the parties to this Lease, and their heirs, legal representatives, successors and assigns. Any sale or transfer of the Premises by Lessor

-26-

during the Term shall be made by an instrument that expressly refers to this Lease as a burden on the Premises.

52. **Joint and Several Obligations.** If Lessor includes more than one person or entity, the obligations shall be joint and several of all such persons and entities.

53. **Force Majeure.** This Lease and the obligations of the Lessee under this Lease shall not be affected or impaired and Lessor shall not be liable in the event Lessor is unable to fulfill any of its obligations under this Lease or is delayed in doing so if such inability or delay is caused by "force majeure." The term "force majeure" as used in this Lease shall mean "Acts of God," labor disputes (whether lawful or not), material or labor shortages, restrictions by any governmental authority, civil riots, floods, acts of terrorism or other cause beyond Lessor's control.

54. **Interpretation.** The captions, sections, clauses, article numbers, section numbers and table of contents, if any, of this Lease are inserted for convenience only and in no way limit, enlarge, define or otherwise affect the scope or intent of the Lease or any provision of this Lease. The parties intend that

the interpretation and enforcement of this Lease be governed by the laws of the State of Florida. If there is more than one Lessee, the obligations and liabilities imposed on Lessee by this Lease shall be joint and several. The words "Lessor" and "Lessee" shall also extend to and mean the successors in interest of the respective parties and their permitted assigns, although this shall not be construed as conferring on the Lessee the right to assign this Lease or sublet the Premises or confer rights of occupancy on anyone. All charges due from Lessee to Lessor under this Lease, including, without limitation, any charges against Lessee by Lessor for services or work done on the Premises by order of Lessee, except sales tax, shall be deemed additional rent shall be included in any lien for rent, and shall be paid (including sales tax) without set-off or defense of any kind. This Lease has been fully negotiated and reviewed by the parties and their counsel and is the work product of both Lessor and Lessee; it shall not be more strictly construed against either party. Provisions inserted in or affixed to this Lease shall not be valid unless appearing in the duplicate original held by the Lessor and initialed by the Parties. In the event of variation or discrepancy, the Lessor's duplicate shall control. This Lease and the exhibits, schedules, addenda, riders, and guaranty, if any, attached to this Lease are incorporated in this Lease and set forth the entire agreement between the Lessor and Lessee concerning the Premises and Building and there are no other agreements or understandings between them. This Lease and its exhibits, schedules, addenda, riders, and guaranty, if any, may not be modified except by agreement in writing executed by the Lessor and Lessee. Nothing in this Lease creates any relationship between the parties other than that of lessor and lessee and nothing in this Lease constitutes the Lessor a partner of the Lessee or a joint venturer or member of a common enterprise with the Lessee. Wherever necessary to properly construe this Lease, the use of the singular shall include the plural and the use of the masculine shall include feminine.

55. **Consents and Approvals.** If, pursuant to any provision of this Lease, the consent or approval of either party is required to be obtained by the other party, then, unless otherwise provided in this Lease, the party whose consent or approval is required shall not

-27-

unreasonably withhold, condition or delay its consent or approval.

56. **Radon Gas Notification.**

RADON GAS: Radon is a naturally occurring radioactive gas that, when it has accumulated in a building in sufficient quantities, may present health risks to persons who are exposed to it over time. Levels of radon that exceed federal and state guidelines have been found in buildings in Florida. Additional information regarding radon and radon testing may be obtained from your county health department.

57. **Limitation of Right of Recovery.** In the event of a breach or default by Lessor of any of its obligations under this Lease, Lessee shall look solely to Lessor's equity interest in the Premises for the satisfaction of Lessee's remedies. It is specifically understood and agreed that there shall be no personal liability of Lessor or any member, director, officer, shareholder, partner, trustee, beneficiary, employee or agent of Lessor with respect to any of the covenants, conditions or provisions of this Lease.

58. **Payment or Performance.** Lessor shall have the right, on ten (10) days prior written notice to Lessee (or without notice in case of emergency or in order to avoid any fine, penalty, or cost which may otherwise be imposed or incurred pursuant to this Lease), to make any payment or perform any act required of Lessee under any provision in this Lease, and in exercising that right, to incur necessary and incidental costs and expenses, including reasonable attorney's fees. Nothing in this Lease shall imply any obligation on the part of Lessor to make any payment or perform any act required of Lessee, and the exercise of the right to do so shall not constitute a release of any obligation, waiver of any default or obligation of Lessor to make any similar payment or perform any similar act in the future. All payments made, and all costs and expenses incurred in connection with Lessor's exercise of the right set forth in this Section, shall be reimbursed by Lessee in accordance with the Prompt Payment Act. Any such payments, costs and expenses made or incurred by Lessor shall be treated as Additional Rent owed by Lessee.

59. **Truth of Statements.** Lessee warrants to Lessor and to anyone to whom Lessor assigns this Agreement that each statement made by any Lessee to Lessor in, and in connection with, this Lease is true.

60. **Miscellaneous.** Wherever necessary to properly construe this Lease, the use of the singular includes the plural and the use of the masculine includes the feminine.

61. **Bankruptcy.** Lessee acknowledges and confirms that, in any bankruptcy it/he/she may file during the life of this Lease, that Lessee shall provide Lessor with a consent to any motion for relief from the automatic stay filed by Lessor concerning this Lease and further shall sign all documents and take all steps necessary to provide Lessor with complete and total relief from the automatic stay concerning this Lease, without delay, and Lessee's signature on this Lease shall constitute that consent.

-28-

62. **No Reliance: Construction.** Each of the Parties hereto hereby declares that prior to the execution of this Agreement; they have apprized themselves of sufficient relative data in order to intelligently exercise his/her own judgments in deciding on the contents of this Agreement and whether to execute this Agreement. Lessee acknowledge that its, his or her decision to

execute this Agreement, is not as a result of undue influence or duress, and not predicated on or influenced by any declarations or representations not set forth in this Agreement, by the Lessee, or any other person or party, or any predecessors in interest, its successors, assigns, officers, directors, employees, agents or attorneys. Each of the parties hereto hereby further acknowledges and agrees that each of them has had significant input in the development of this Agreement and this Agreement shall not, therefore, be construed more strictly against any party responsible for its drafting.

63. **No Agencies, Partnership or Joint Venture.** Nothing in this Agreement, nor acts of the Parties, shall be deemed or construed as in any way creating a relationship including, without limitation, agency, partnership, joint venture or any other similar relationship between the Lessor and Lessee.

64. **Facsimiles and Counterparts.** This Agreement may be executed in one or more counterparts, all of which may be deemed an original and together shall constitute one and the same Agreement. Facsimile copies with original signatures may be used, however, all documents delivered pursuant hereto must be originals.

65. **Exhibits.** All Exhibits attached hereto are incorporated herein as though fully set forth and shall be considered a part of this Lease.

66. **Ethics Clause:** Lessor warrants that it has not employed, otherwise had act on its behalf any former County officer or employee subject to the prohibition of Section 2 of Ordinance No. 010-1990 or any County officer or employee in violation of Section 3 of Ordinance No. 020-1990. For breach or violation of this provision the Lessee may, in its discretion, terminate this contract without liability and may also, in its discretion, deduct from the Lease or otherwise recover the full amount of any fee, commission, percentage, gift, or consideration paid to the former County officer or employee.

67. **Public Entity Crime:** A person or affiliate who has been placed on the convicted vendor list following a conviction for public entity crime may not submit a bid on a contract with a public entity for construction or repair of a public building or public work, may not submit bids on leases of real property to public entity, may not be awarded or perform work as a contractor, supplier, subcontractor, or consultant under a contract with any public entity, and may not transact business with any public entity in excess of the threshold amount provided in Section 287.017 F.S. for Category Two for a period of 36 months from the date of being placed on the convicted vendor list (Category Two \$10,000.00)

68. This lease may be terminated by the lessee upon written ninety (90) days notice to the Lessor that the lessee has obtained adequate office space in a governmental building, but in no case shall lessee terminate the lease prior to September 30, 2007, even if adequate office space in a governmental building becomes available before that date.

The parties certify that they have carefully read and understood every word in this Lease and by signing agreed to faithfully comply with its provisions.

LESSOR: **HILLSBOROUGH CENTER ASSOCIATES, LLC.**

By: _____
[Signature]

[Printed name] Curtis A. Skomp Title: Property Manager

Date: _____

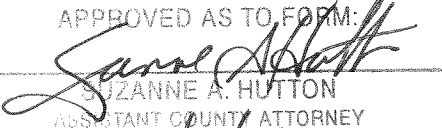
SEAL

ATTEST: DANNY L. KOLHAGE, CLERK

BOARD OF COUNTY COMMISSIONERS
MONROE COUNTY, FLORIDA

MONROE COUNTY ATTORNEY

APPROVED AS TO FORM:


SUZANNE A. HUTTON
ASSISTANT COUNTY ATTORNEY
Date: 8/12/05

Deputy Clerk

Mayor/Chairman

-29-

RULES & REGULATIONS – HABANA PLAZA COMMERCIAL TENANTS

Lessee agrees for itself, its employees, agents, clients, customers, invitees and guests, to comply with the following rules and regulations. Lessee agrees that Lessor may amend, modify, and delete the following rules and regulations or add new and additional reasonable rules and regulations for the use and care of the leased premises, the building of which the leased premises are a part, the parking and other common areas and all of the Plaza. Lessee agrees to comply with all additional or modified rules and regulations when Lessee receives notice from Lessor or Lessor posts them in a place within the Plaza that Lessor may designate. In the event of any breach of any rules and regulations set forth in this Lease or any amendments or additions to it, Lessor shall have all remedies in this lease provided for default of Lessee.

Lessee covenants and agrees with Lessor that:

(1) Lessee shall not affix or maintain outside the leased premises, including the exterior of the glass panes and supports of the show windows (and within six (6) inches of any window), doors and exterior walls of the leased premises or any place within the leased premises if intended to be seen from the exterior of the leased premises, any signs, banners, advertising placards, names, insignia, notices, trademarks, descriptive material or any other similar item or items, and Lessor shall have the right, without giving prior

notice to Lessee and without any liability for damage to the leased premises reasonably caused by removal, to remove such items from the leased premises, unless Lessee shall have first received Lessor's written approval as to size, type, color, location, copy, nature and display qualities. No symbol, design, name, mark or insignia adopted by Lessor for the Plaza shall be used without Lessor's prior written consent. No illuminated signs located in the interior of any store and which are visible from the outside shall advertise any product. All signs located in the interior of any store shall be in good taste, so as not to detract from the general appearance of the store and the Plaza. Lessee shall not use handbills for advertising at the Plaza;

(2) No awning or other projections shall be attached to the exterior walls of the leased premises or the building of which they form a part;

(3) All loading and unloading of goods shall be done at the times, in the areas, and through the entrances that Lessor shall designate for that purpose;

(4) All garbage and refuse shall be kept in the kind of container specified by Lessor, shall be placed in the areas specified by Lessor and prepared for collection in the manner and at the times and places specified by Lessor. If Lessor shall provide or designate a service for picking up refuse and garbage, Lessee shall use same at Lessee's cost and contribute a monthly pro rata share of the expense. Lessee will not install or cause to be installed any automatic garbage disposal equipment without the Lessor's prior written consent; any Tenant may not place trash outside of approved container. Any tenant placing trash or debris outside an approved container will be fined \$100 per occurrence and Landlord may, at Landlord's sole discretion terminate the Tenant's lease.

-30-

If Tenant needs to dispose of "Bulk Refuse" Tenant shall call Management Office to arrange for disposal.

(5) No radio or television or other similar device shall be installed, and no aerial shall be erected on the roof, on exterior walls of the leased premises, or on the parking area or other common areas. Any such device or aerial, so installed, shall be subject to removal without notice at any time;

(6) No loud speakers, televisions, stereos, radios or other audio devices shall be used in a manner so as to be heard or seen outside of the leased premises without the Lessor's written consent;

(7) No auction, fire, bankruptcy or selling-out sales shall be conducted on or about the leased premises without the Lessor's prior written consent;

(8) Lessee shall keep Lessee's display windows illuminated and signs and lights on the storefront lighted every day of the term of this lease during the hours designated by Lessor;

(9) Lessee shall keep the leased premises at a temperature sufficiently high to prevent freezing of water in pipes and fixtures, and Lessee agrees at all times to maintain the temperature of the leased premises consistent with the temperature in the building of which the leased premises are a part, so as not to cause any decrease or increase in the temperature in the building of which the leased premises are a part when same is being heated or cooled, as the case may be;

(10) Lessee shall not place or permit any obstructions or merchandise including newspapers, flyers, magazines or any other like material in any parking areas or other common areas or in the service corridors, sidewalks, entrances, passages, courts, corridors, elevators or stairways;

(11) Lessee and Lessee's employees shall not park their cars in the front parking lot, the front parking lot is for the use of "customers" only. Any Tenant or Tenants employee parking in the front parking lot will be fined \$100.00 per occurrence. Employee will be personally responsible for the payment of the fine. Lessee shall furnish Lessor the state automobile license numbers assigned to Lessee's car or cars and the cars of Lessee's employees within three (3) days of any request to do so by Lessor;

(12) Lessee shall use at Lessee's cost the pest extermination contractor that Lessor may direct and at intervals that Lessor may require, provided the cost is competitive with any similar service available to Lessee;

(13) In the event Lessor installs a supervised fire sprinkler alarm system for the protection of Lessee and of the Plaza, Lessee agrees to pay its pro rata share of the monthly alarm service charge;

-31-

(14) In the event Lessor installs a security camera system for the protection of the Lessee and of the Plaza, Lessee agrees to pay its pro rata share of the monthly security camera charge;

(15) Lessee will cooperate and participate in all security programs affecting the Plaza;

(16) Lessee shall not make or permit any noise or odor which Lessor deems objectionable to emanate from the leased premises. No person shall use the leased premises as sleeping quarters, sleeping apartments, or lodging rooms;

(17) Except for those exclusively for use by employees of Lessee which are not visible from the sales area of Lessee or the exterior of the leased premises, Lessee shall not operate any coin or token-operated devices such as, but not limited to, pay telephones, pay lockers, pay toilets, scales, amusement devices and machines for the sale of beverages, foods, candy, cigarettes or other commodities, without Lessor's prior written consent;

(18) Lessee shall not place or maintain any temporary fixture for the display of merchandise in front of or within three (3) feet of any entrance to the leased premises.

Lessor shall have the right, without giving prior notice to Lessee and without any liability for damage to the leased premises or Lessee's merchandise, to remove any such fixtures from the leased premises, except those that shall have first received Lessor's written approval as to size, color, location, nature and display qualities; and

(19) Lessee shall not make noises, cause disturbances or vibrations or use or operate any electrical or electronic devices or other devices that emit sound or other waves or disturbances, or create odors, any of which may be offensive to other Lessees and occupants of the Plaza or that would interfere with the operation of any device or equipment or radio or television broadcasting or reception from or within the Plaza or elsewhere.

(20) Lessee's hours of operations shall begin no earlier than 6:00 A.M. and end no later than 2:00 A.M. on a daily basis.

(21) No consumption or open containers of any alcoholic beverages is allowed on the common area of the premises.